

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 03-26-03 Item. 3.h.

File Number  
CP 02-069

Application Type  
Conditional Use Permit

Council District  
8

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
680-02-003; -004

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: John W. Baty

Location: South side of Yerba Buena Road, approximately 500 feet westerly of San Felipe Road (2750 Yerba Buena Road)

Gross Acreage: 2.88

Net Acreage: 2.88

Net Density: N/A

Existing Zoning: A-Agriculture

Existing Use: 7,100 square-foot church

Proposed Zoning: No change

Proposed Use: 3,550 square-foot classroom addition

### GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation  
Low Density Residential (5 DU/AC) and Public Park and Open Space

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: JWB

North: Single-family attached residential

A(PD) Planned Development

East: Thompson Creek

A-Agriculture

South: Thompson Creek

A-Agriculture

West: Single-family Detached Residential

A(PD) Planned Development

### ENVIRONMENTAL STATUS

Completed by: JWB

☐ Environmental Impact Report found complete  
☒ Negative Declaration circulated on March 5, 2003  
☐ Negative Declaration adopted on

☐ Exempt  
☐ Environmental Review Incomplete

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: JWB

Department of Public Works

See attached Public Works Final Memo.

Other Departments and Agencies

N/A

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**GENERAL CORRESPONDENCE**

None received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Evergreen Valley Church, is requesting a Conditional Use Permit to allow a 3,550 square foot classroom addition to their existing 7,100 square foot church. The subject property is zoned A-Agriculture. The existing site is approximately 2.88 acres and is currently developed with an existing church built in the late 1980's. The site takes access off of Yerba Buena Road by way of a 32-foot wide private driveway.

The existing church building is located at the southwest corner of the property. The majority of the site has been graded to accommodate the existing parking areas. The site has moderately steep areas of topography with slopes ranging from 2 to 10 percent.

Surrounding uses include single-family attached houses to the north across Yerba Buena Road, single-family detached houses to the west, and Thompson Creek to the east and south.

**Project Description**

The proposed project consists of a 3,550 square foot addition proposed in two phases. Phase one is a 324 square foot addition to the northeasterly corner of the existing building. Phase two would be a 3,226 square foot addition at the southeast corner of the existing building. The addition would accommodate new classroom space for the existing Sunday school and after school programs for junior high and high school age children. This classroom use is not in lieu of traditional public or private education. Only minimal grading is necessary to accommodate this addition.

## **GENERAL PLAN CONFORMANCE**

The project site has General Plan Land Use/Transportation Diagram designations of Public Park and Open Space over the easterly half of the site and Low Density Residential (5 DU/AC) over the westerly half of the site. The proposed addition to the existing church is located partially within the area designated Low Density Residential (5 DU/AC) and partially within the area designated Public Park and Open Space, as is the existing church, and is consistent with the subject site's General Plan designation.

## **ANALYSIS**

The primary issues analyzed for the project include conformance to the Zoning Ordinance, conformance with the Riparian Corridor Policy, conformance with the Church Location Policy and conformance with the Evergreen Development Policy.

### Conformance to the Zoning Ordinance Requirements

The Zoning Code requires a minimum 300-foot setback from abutting property zoned or used for residential purposes. The existing church has a 40 foot minimum setback along the westerly property line which is bordered by residential uses. The two proposed areas of addition are located approximately 80 feet and 120 feet from the westerly property line and are on the opposite side of the building facing east that is shared with existing single-family residential uses.

City Council adopted an ordinance in September 2002 amending the Zoning Code to allow the Director the ability to grant a reduction in the minimum required setback from an abutting property zoned or used for residential purposes for additions to existing structures or new structures on a lot located in either the A-Agriculture or OS-Open Space Zoning District.

In order to qualify for the setback exception, the following criteria must be met: 1) the subject site is located adjacent to a residentially zoned or used property and has substantial existing development; 2) the sizes of any and all additions shall not exceed fifty percent of the square footage of the existing structures; 3) the aggregate total square footage of all additions shall not exceed fifty percent of the square footage of the existing structures on the subject site or lot as of February 19, 2001; 4) any addition or structure to be added shall not significantly diminish the existing, legal nonconforming setback, and, in any event, no addition or structure to be added shall reduce a setback to less than fifty feet; and 5) any new addition or structure shall not exceed the height of existing structures located on the subject site or lot, or the maximum height allowed by the Zoning Code.

The proposed addition meets all of the setback exception requirements in that: 1) the site is located adjacent to residentially zoned property and has substantial existing development; 2) the proposed addition

approximately 50 square feet of the total addition, is located between 90 and 100 feet from the closest edge of the Thompson Creek riparian corridor. The majority of the addition is 100 feet or more from the riparian edge. The site was developed prior to the Riparian Corridor Policy and has a large, existing parking lot located directly adjacent to the corridor. Since this existing parking lot separates the proposed addition from the riparian corridor there would not be any value to imposing a greater setback for this building.

New development adjacent to riparian habitats should generally be set back a minimum of 100 feet from the outside edge of the riparian habitat. There are circumstances identified in the Riparian Corridor Policy that would allow consideration of setbacks less than 100 feet. One circumstance applicable to this project is for sites with unusual geometric characteristics and/or disproportionately long riparian frontages such as this. The Riparian frontage extends along the eastern and southern edge of the property.

#### Conformance with Church Location Policy

The proposed addition to the existing church meets all of the development standards outlined in the Church Location Policy.

*Project Acreage and Site & Building Design.* The policy states that the minimum lot size for construction of a new church should be one acre. The proposed addition to the existing church is located on a site that is almost three acres. The buildings are designed to integrate with the existing church building with rooflines that do not extend above the existing.

*Building Setbacks.* The policy recommends a 25-foot minimum building setback from all property lines, particularly adjacent to residential uses. The existing church is 40 feet from the nearest residential property line to the west. The proposed additions will be at least 80 feet from the nearest residential property line and at least 50 feet from any other property line.

*Landscaping.* The Church Location Policy recommends a minimum 5-foot landscape area along all interior property lines with 15-foot minimum front setback landscaping. The existing landscaping, which was installed with the previous approval exceeds both minimums. Under the current proposal the applicant is proposing additional trees and groundcover to supplement the existing landscaping.

#### Conformance with the Evergreen Development Policy

The Evergreen Development Policy (EDP) states that any non-residential proposals shall be responsible for mitigating any traffic impacts they create. The EDP defined “any” traffic as being one trip through a Level of Service (LOS) E or F intersection. Further analysis by the Public Works Department concluded that a less than one-half percent increase in traffic from non-residential development through an LOS E or F intersection would be an insignificant impact.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public Park and Open Space and Low Density Residential (5 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A-Agriculture Zoning District.
3. The project site is 2.88 acres in area.
4. The project site is currently developed with an existing 7,100 square church built in the late 1980's.
5. The project proposes a total of 3,550 square feet of classroom addition to be located approximately 80 feet and 120 feet from the adjacent properties used for single-family residences west.
6. The classrooms will only operate on weekends and after 7 p.m. on weekdays.
7. The nearest corner of the proposed addition to the southeasterly corner of the existing church is located approximately 90 feet from the edge of the Thompson Creek Riparian corridor.
8. The proposed building addition is separated from the adjacent riparian corridor by an existing parking lot.
9. A Mitigated Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for

plans entitled, "Evergreen Valley Church", dated February 2, 2002, last revised on November 7, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).

2. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
3. **Water Quality:** The project shall incorporate mitigation measures to minimize urban run-off. The mitigation measures include a storm water run-off management plan for construction activities to the satisfaction of the Department of Public Works, and compliance with all applicable City, Local, Regional, State and Federal laws. The project shall conform to the City of San José National Pollution Discharge Elimination System (NPDES) Storm Water Permit and shall include Best Management Practices (BMPs) as specified in the *Blueprint for a Clean Bay* to control the discharge of storm water pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City project Engineer. The Erosion Control Plan may include BMPs as specified by the Association of Bay Area Governments' Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities. For above, please call the Department of Public Works at (408) 277-5161.
4. **Tree Removals.** Any tree that is removed from the site shall be mitigated at these ratios in accordance with the approved landscape plan: each tree less than 12" in diameter to be removed = one 15 gallon tree, Each tree 12" to 18" diameter to be removed = two 24" box trees, Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit has been approved for the removal of such trees. Each tree greater than 18" diameter to be removed = four 24" box trees. No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.

vehicles or material, or other disruptions, is allowed. Fencing may be required for areas subject to direct impact, such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.

6. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. All construction equipment, fixed or mobile, should be in proper operating condition and fitted with standard factory silencing features. Mufflers shall be used on all heavy construction equipment.
7. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
8. **Hours of Operation.** In order to ensure compliance with the Evergreen Development Policy regarding the generation of AM and PM peak traffic trips, activities shall be limited to those which do not involve any assemblies of people on the site resulting in the influx of vehicles to the site between the hours of 6:30 a.m. to 8:30 a.m. and the hours of 4:30 p.m. to 7:00 p.m. (Monday through Friday) except for vehicles associated with the priest, property caretaker and/or building/site maintenance. No day care and worship services are allowed during peak hours on weekdays.
9. **Maximum Occupancy.** The maximum combined occupancy of the church and school shall not exceed 376 persons.
10. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
11. **Air Quality:** During construction, the following measures shall be incorporated to mitigate any possible significant air quality impacts.
  - a. Water all active construction areas at least twice daily



streets.

12. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Upon notice by the City any such nuisance must be abated immediately.
13. **Archaeology:** Pursuant to Section 7050.5 of the Health and Safety Code, and section 5097-94 of the Public Resources Code of the State of California; in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonable suspected to overlies adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to State Law, then the applicant shall re-enter the human remains and items associated with native American burials on property in a location not subject to further subsurface disturbance.
14. **Geology:** Standard engineering and construction techniques will be incorporated into the project to mitigate potential adverse seismic/ground failure impacts to a non-significant level.
15. **Colors and Materials.** All colors and materials shall be as specified on the approved plan set.
16. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-06341) to the satisfaction of the Director of Public Works:
  - a. *Sewage Fees.* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
  - b. *Geology.* The project site is within the State of California Seismic Hazard Zone. A geologic/geotechnical report addressing the potential of earthquake induced landsliding and other geologic hazards must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit. The report should be consistent with State guidelines for the preparation of engineering geologic and seismic hazard reports (CDMG Note 44 and Special Publication 117).
  - c. *Grading Permit.* A Grading Permit is required prior to the issuance of a Public Works Clearance.

2756 for the designated street tree.

- f. *Street Improvements.* Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project. Remove and replace broken or uplifted curb, gutter and sidewalk along project frontage. Improvements of the public streets shall be to the satisfaction of the Director of Public Works. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
  - g. *Municipal Water.* In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Tim Town at (408) 277-3671 for further information.
  - h. *Minor Improvement Permit.* The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.
  - i. *Reimbursement.* The reimbursement for the Evergreen Valley Church frontage along Yerba Buena Road was paid in full at the time of the development of Tract 7903.
17. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP02-069 shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
18. **Fire Flow.** Required fire flow for the site is 2,750 G.P.M., or as approved in writing by the Fire Chief, and shall be provided from a minimum of 3 hydrants and shall be spaced apart on average 300 feet from the proposed project.
19. **Automatic Fire Extinguishing System.** All existing buildings that exceed 10,000 square feet with

22. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled, and maintained so that no light source is visible from outside of the property.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.